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NEW DELHI, WEDNESDAY, MAY 20, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 11th May, 1953

S.R.O. 922.—WHEREAS the election of Shri Nathu Singh Rajput as a member of the Legislative Assembly of the State of Rajasthan from the Barmer 'B' constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Hakikatullah Khans/o Shri Shahbaz Khan, Sindhiyon-ka Bas, Ward No. 8, Jodhpur ;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission ;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, RAJASTHAN, BIKANER

ELECTION PETITION No. 283 of 1952

CORAM :—

Shri M. P. Asthana—*Chairman.*

Shri M. C. Bhandari—*Member.*

Shri Goverdhandas T. Gajria—*Member.*

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE ACT, 1951.

Shri Hakikatullah s/o Shahbaz Khan, resident of Jodhpur, Sindhi-yan-ka Bas, Ward No. 8 —
Petitioner

Versus

1. Shri Nathu Singh s/o Maharaj Singh, Malli Nath, Rajput, Boarding House, Barmer.
2. Padam Singh s/o Jugat Singh, Malli Nath, Rajput Boarding House, Barmer.
3. Barkatullah Khan s/o Rahmatullah Khan inside Sojatia Gate, Ward No. 1, Jodhpur—
Respondents.

Shri Ahmed Bux Sindhi, Advocate for the petitioner.

Shri Thanchand Mehta, Advocate with Shri Bhopal Singh Advocate, for the respondent
No. 1.

Respondents Nos. 2 and 3 absent.

Petition under Section 81 of the Representation of the People Act, 1951 for declaration of the election of the respondent No. 1 to the Rajasthan Legislative Assembly from the Barmer "B" constituency as void.

JUDGMENT

This petition has been filed by one Hakikatullah under Section 81 of the Representation of the People Act, 1951 for a declaration under section 100 of the same act that the election of the respondent No. 1 from the Barmer "B" constituency to the Rajasthan Legislative Assembly is void.

The facts are that during the last elections, the petitioner and the respondents had filed their nomination papers as candidates for election as members to the Rajasthan Legislative Assembly, from the Barmer "B" constituency, before the Returning Officer of the said constituency, on 26th November 1951. On the date of the scrutiny of these nomination papers which took place on 30th November, 1951, an objection was raised as against the identity of the proposer of the petitioner and also his age which was said to be below 21 years. After hearing the parties and the evidence adduced by them the Returning Officer passed the following order on the petitioner's nomination paper :—

"As the age of the proposer has been proved to be below 21 years, he is not eligible to be a proposer. This form of Shri Hakikatullah has been rejected."

Besides the ground of improper rejection of his nomination paper, the petitioner has alleged in his petition that the Returning Officer has improperly rejected the nomination paper of the respondent No. 3 on the ground that as President of the Municipality Jodhpur, the respondent No. 3 was holding an office of profit and as such disqualified under the provisions of Article 191 (1) (a) of the Indian Constitution. The respondent No. 1 in para. 5 of his written statement, has denied the allegations made by the petitioner, in para. 7 of his petition regarding the rejection of the nomination paper of the respondent No. 3 and has further asserted that the same was rightly rejected. The petitioner has neither produced before us the nomination paper of the respondent No. 3 nor the order passed by the Returning Officer thereon. He has further alleged in his petition that the nomination paper of respondent No. 1 has been improperly accepted by the Returning Officer as he holds an office of profit under the Government of Rajasthan in as much as he is a Jagirdar holding three villages in jagir from the State of Rajasthan the income of which he realises for the services which he renders or is deemed to render to the State. Besides this, as a Jagirdar he exercises the following powers, amongst many others *viz.* :—realization of rent revenue, granting of exemption from land revenue, granting of tenancy rights in the Jagirdari lands, sale of land and granting of pattas in Abadi as well as agricultural lands, and further enjoys the privileges according to the prevalent rules and customs in the State.

Out of the three respondents, the respondent No. 1 who is the successful candidate, has alone appeared and contested the petition. He has filed a written statement in which he has denied the allegations made in the petition regarding the improper rejection of the nomination paper of the petitioner and respondent No. 3 and the improper acceptance of his nomination paper and has contended that the orders passed by the Returning Officer on the nomination paper of the petitioner and the respondents No. 1 and 3 are correct and legal and that he had power to enquire into and decide the question in controversy at the time of the scrutiny. He has further alleged that the respondent No. 3 was, by virtue of being the President of the Jodhpur Municipality holding an office of profit as he was drawing an honorarium of Rs. 130 p.m. out of the funds of the Municipality, which was being financed by the Rajasthan Government to some extent, and lastly that in any case, the result of the election has not been materially affected on account of the improper rejection of the nomination papers referred to above, as (1) the petitioner and the respondent No. 3 are residents of Jodhpur and have no connection with the Barmer "B" constituency, (2) the proportion of the Muslim voters in the said constituency was too insignificant to warrant an expectation that any of these persons could have secured a victory over the respondent No. 1, if their nomination papers had been accepted, (3) the dynamic personality of his Late Highness, Maharaja Hanwant Singh Ji Sahib of Jodhpur who carried on a vigorous campaign on behalf of the respondent No. 1 was too overpowering a factor to bear even a shadow of a chance for the success of any of the rejected candidates, of which the proof is the defeat of the present Chief Minister Rajasthan at the hands of Thakur Madho Singh of Bhanswara who was sponsored as a candidate by the Late His Highness from the Jalore "A" constituency and (4) that the petitioner being a member of the minority community had practically no chances of success as against the respondent No. 1. The respondent No. 1 has also denied that he is holding any office of profit by virtue of his being a Jagirdar.

The case was adjourned to 14th February, 1953 for framing of issues, and on this date before framing the issues which arose for consideration out of the parties' pleadings, the Tribunal thought it proper to examine the petitioner and the respondent No. 1 in order to elucidate certain points which did not appear to be quite clear from the pleadings. Accordingly the statements of the petitioner and the respondent No. 1 and also their respective counsels were recorded, which will

be discussed under the appropriate issues. The Tribunal after recording these statements framed the following issues :—

Issues :—

- (1) Was the nomination paper of Shri Hakikatullah improperly rejected by the Returning Officer as alleged ? If so, has it materially affected the result of the election ?
- (2) Was the nomination paper of the respondent No. 3 Shri Barkatullah Khan improperly rejected as alleged by petitioner ?
- (3) Is respondent No. 1 holding an office of profit under the State of Rajasthan and as such his nomination paper was improperly accepted ? If so, has it materially affected the result of the Election ?
- (4) Was the nomination paper of the petitioner liable to be rejected as alleged in para. 11 of the written statement ?
- (5) To what relief, if any, is the petitioner entitled ?

After the framing of the issues the case was put off to 20th March, 1953 for the petitioner's evidence, 21st for respondent's evidence and 23rd for arguments. Thereafter the petitioner's counsel presented an application in which he prayed that as his witnesses would be coming from ————— villages in Barmer district, which is 130 miles away from Jodhpur, it will be less expensive ————— inconvenient if the Tribunal holds the sitting at Jodhpur instead of Bikaner, to which the counsel for the respondent No. 1 had no objection. Accordingly it was decided by the Tribunal that the sittings fixed for evidence and arguments, shall be held at Jodhpur. The case was, therefore, taken up at Jodhpur and the evidence was recorded on 20th, 21st March, but as 23rd March happened to be a holiday, the hearing for arguments was adjourned to 24th. We have heard the arguments of the learned counsels of the parties and after giving our most thoughtful consideration to them, our findings on the issues raised are as under :—

*Issue No. 1 :—*1st Part In the negative.
2nd Part Does not arise.

*Issue No. 2 :—*In the negative.

*Issue No. 3 :—*1st Part In the negative.
2nd Part Does not arise.

*Issue No. 4 :—*Unnecessary in view of the finding on issue No. 1.

*Issue No. 5 :—*Petition dismissed with costs as ordered.

(a) (5) *Issue No. 1.*—It is alleged by the petitioner that his nomination paper has been improperly rejected by the Returning Officer on the ground that the age of his proposer whose name was Bahadur was proved to be below 21 years on the date of nomination. His contention is that since his age as entered in the electoral roll which was prepared according to the provisions of the Representation of People Act, XLIII of 1951, was 25 years, it was conclusive and binding so far as the Returning Officer was concerned, and he had absolutely no power to go behind the entries made in the electoral roll and hold an enquiry in order to ascertain the correct age of the proposer. What has happened in this case, is that on the date of scrutiny of the nomination paper of the petitioner, an objection in writing was raised by Shri Padam Singh, which has been produced before us and marked as Ex. 3 to the effect that the proposer Bahadur, who had subscribed to the nomination paper of the petitioner, was not the same person whose name appeared in the electoral roll as "Bahadur s/o Sihla" and also that he was below 21 years and as such was disqualified to become an elector under the provisions of Article 326 of the Constitution of India which are as under :—

"The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage ; that is to say, every person who is a citizen of India and who is not less than 21 years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election."

As to what happened on the date of the scrutiny of the nomination paper of the petitioner, before it was rejected, we have recorded the statements of the petitioner and the respondent No. 1 and their respective advocates, on 14th February, 1953 before the issues were framed and also examined the Returning Officer Shri J. N. Kunzuru as P. W. 1. and Noor Mohammed P. W. 4 on the date of hearing of this petition, and find that when an objection was taken the Returning Officer gave the parties an opportunity to adduce evidence as to the age of the proposer Bahadur

before him, which was done by them. Two witnesses were examined in support of the age, of the proposer as entered in the electoral roll, and a letter marked as Ex. A-1 which has been denied by the petitioner, said to have been addressed to the Collector, Barmer, by the Head Master of the D. H. High School, Barmer, in which this proposer is alleged to have studied, which mentions that the date of birth as entered in the Scholar register of school is 3rd February, 1932 was produced. The Returning Officer, who was examined as P. W. 1 before us, has stated that he considered the letter of the Head Master of the School, Ex. A and the evidence of the uncle of the proposer Bahadur, and then come to the conclusion that the age of the proposer was proved to be below 21 years with the result that he rejected the petitioner's nomination paper. He does not remember if he examined any other witness, but it is clear from his evidence that some evidence was led before him by the parties, from which he came to the above conclusion. It may be mentioned here that it is not only the age of the proposer, which had been objected to but also his identity was questioned at the time of the scrutiny of the petitioner's nomination paper. Now the question for consideration is whether the entry in the electoral roll relating to the age of the proposer as 25 years, is conclusive by reason of the provisions of Section 36 (7) (a) of the Representation of the People Act, 1951, or whether notwithstanding such an entry in the electoral roll, the question of age could be enquired into by the Returning Officer as well as the Election Tribunal. There is also a further question in this case, as to what is the effect if the age of the proposer is not proved to be 21 years on the question of his identity which appears to have been raised regarding him. The learned counsel for the petitioner has contended that the order of the rejection of the petitioner's nomination paper, shows that this objection as to identity has been rejected. But in our opinion this is not so. If the petitioner wanted to prove that the Returning Officer had no doubt about the identity of the proposer, when he examined the Returning Officer, as his witness, he should have made this clear from him. But no question was put to him on this point. We are therefore constrained to come to the conclusion that since the Returning Officer rejected the nomination paper of petitioner on the ground that the proposer's age was proved to be below 21 years, he did not feel the necessity of enquiring into the proposer's identity.

In support of his contention that the age as entered in the electoral roll is conclusive for all purposes and cannot be enquired into either by the Returning Officer or by the Election Tribunal, in order to determine the qualification or disqualification of a person as an elector or as a candidate, the learned counsel for the petitioner has referred us to S. 36 (7) (a) of the Representation of the People Act, 1951, which runs as under :—

“the production of any certified copy of an entry made in the electoral roll of any constituency shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe to a nomination paper, as the case may be unless it is proved that the candidate is disqualified under the Constitution or this Act, or that the proposer or seconder, as the case may be, is disqualified under sub-section (2) of section 33.”

He has also relied upon Rules 18, 19 and 20 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, relating to the decision of the Revising Authority regarding claims and objections, final publication of electoral rolls and revision of electoral rolls after publication in special cases, respectively and has contended that the entries made in the electoral roll cannot be corrected except by resorting to the procedure laid down in these rules, and if any person has not challenged these entries as provided into these rules, he cannot subsequently do so as the same became conclusive. The rules Nos. 18, 19 and 20 run as under :—

18. *Decision of the Revising Authority regarding Claims and Objections.*—(1) The decisions of the Revising Authority shall be final. Every such decision shall be communicated to the Electoral Registration Officer who shall cause the electoral roll to be amended in accordance therewith. (2) The Revising Authority shall also direct the Electoral Registration Officer to correct any clerical or printing errors which the Revising Authority may himself discover in the roll. The Electoral Registration Officer also may, at any time before the final publication of the electoral roll under rule 19, either himself correct any clerical or printing errors which he may discover in the electoral roll or cause such correction to be made in the roll by any person employed by him under sub-section (2) of section 22 of the Act.

19. *Final publication of electoral rolls.*—The electoral roll so amended shall be republished in the manner specified in rule 9 and where it is an electoral roll first prepared under the Act, shall come into force immediately upon such republication and where, it is an electoral roll subsequently prepared under the Act, shall come into force on the first day of October immediately succeeding such republication :

Provided that if for any reason an electoral roll for any constituency or part of a constituency is in any year not republished before the first day of October next after the qualifying date by reference to which that roll is prepared, the electoral roll shall come into force immediately upon republication.

20. *Revision of electoral rolls after final publication in special cases.*—(1) When the Election Commission directs the revision of the electoral roll of any constituency under clause (a) of section 25 of the Act, the roll shall be revised by the preparation of a list containing additions to, omissions from, or alterations in, such roll and all the provisions of these rules shall apply in the case of every such list in like manner as they apply in the case of electoral rolls :

Provided that the Election Commission may direct such modification in any of the prescribed Forms as it may consider necessary for the purpose of such revision.

- (2) Any person whose name is not included in the electoral roll of a constituency for the time being in force and who is entitled to be registered therein may *****apply to the Election Commission for an amendment of the roll by the inclusion of his name therein, and if the Election Commission is satisfied after such notice and such enquiry as it thinks fit, that the applicant is entitled to be registered therein, the Election Commission may direct the amendment of the electoral roll by inclusion therein of an entry relating to the applicant :

Provided that an application under this sub-rule shall not be entertained if it is not accompanied by a fee of rupees fifty, which shall in no case be refunded.

- (3) When any list is republished under sub-rule (1) or a direction is issued under sub-rule (2) the electoral roll to which such list or direction relates shall be deemed to have been revised accordingly.

As against this the contention of the learned counsel for the respondent No. 1 is that according to Article 326 of the Constitution "Every person who is a citizen of India and who is not less than twenty one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election", and there is nothing in the words of section 36 (7) (a) of the Representation of the People Act, 1951, which suggests that the entry in the electoral roll by itself, shall be conclusive so far as the qualifications of an elector are concerned. It merely says that the entry in the electoral roll shall be conclusive evidence of the right of any elector named in the entry to stand for election or to subscribe to a nomination paper, which is entirely different and distinct from making the said entry conclusive regarding the possession of the requisite qualifications by a person whose name is so entered, to be an elector so as to subscribe to a nomination paper. The words "evidence of right" in section 36 (7) (a) of the Representation of the People Act, 1951 mean that in the absence of any other evidence to the contrary, the entry in the electoral roll shall be conclusive evidence of the right of any elector named therein to stand for election or to subscribe to a nomination paper as the case may be. Therefore, it follows that if there is any evidence which negatives the right of any person to be entered in the electoral roll, as required by the provisions of article 326 of the Constitution, it can be enquired and looked into for the purpose of determining whether the person in question, is duly qualified to be an elector or a candidate for the House of People or the State Legislature, as the case may be. Our attention has been drawn to some of the cases decided on this point, under the old law and also under the present law, as to the powers of the Returning Officers and the Election Tribunals to hold an enquiry into the age of a candidate inspite of an entry in the electoral roll giving the requisite age, in order to determine whether the candidate in fact, possesses the requisite qualifications as required by the provisions of law, on the qualifying date, which was fixed as 1st day of March, 1950, according to section 21 of the Representation of the People Act, 1950. This could be done by the Returning Officer at the time of scrutiny of the nomination papers, under section 36 (2) (a) and (b) of the Representation of the People Act, 1951. The consensus of opinion of the Election Tribunals, in case of an enquiry into the qualifications or disqualifications of a candidate for being chosen to fill the seat under the Constitution or the Representation of the People Act, 1951, is that the entries in the electoral rolls are not final, and the Returning Officers and the Election Tribunal can enquire into the said qualifications or disqualifications of the candidate in order to find out his eligibility to fill in a seat under the Constitution or the Representation of the People Act. This view of the law has been adopted by the Election Tribunal, Madras, in the case of *Shri K. Subramanayam Vs. Shri Abdul Hameed Khan* and others, reported on page 2396 of the Government of India Gazette Extraordinary, dated the 13th November 1952 and it has been held therein that the entry in the electoral rolls as regards the age of a candidate is not conclusive and it was open to him to satisfy the Returning Officer that he was in fact more than 25 years which is the qualifying age for a candidate. We have very carefully gone through the judgements of the various Tribunals dealing with the question whether the entry of age of a candidate as entered in the electoral roll is conclusive or not and whether an enquiry in the electoral roll is conclusive or not and whether an enquiry as to his correct age could be made by the Returning Officer or the Election Tribunal and we are of the opinion that there is no provision either in the Representation of the People (Preparation of Electoral Rolls) Rules, 1950, which may suggest that the entry as to the age of a candidate in the electoral roll is final and conclusive and cannot be enquired into at the time of the scrutiny or by the Election Tribunal. To be of a proper age required for being an elector or a candidate is a statutory qualification, the absence of which is a statutory disqualification about which there can be no waiver. If a person is really below 21 years or 25 years, which are the qualifying ages for an elector, and

a candidate respectively, then he is inherently lacking in the statutory qualification to become either an elector or a candidate as the case may be.

The real question which is involved for consideration in this case, is whether the Returning Officer had power to enquire into the qualifying age of the proposer Bahadur, as an elector. No doubt the question of the eligibility of a proposer who should not be less than 21 years, on the qualifying date, is somewhat different, from that of a candidate, but in our opinion, when the question relates to the possession of a statutory qualification by an elector on the qualifying date, the entry in the electoral roll as to the age cannot be said to be conclusive and a bar to the holding of an enquiry by the Returning Officer or the Election Tribunal as to such qualification. To take a contrary view would amount to a boy of ten years whose name happens to be in the electoral roll with 21 years as his age, becoming an elector and a proposer or a seconder, which is a statutory disqualification. The electoral roll is therefore not final if the person whose name appears therein is under a statutory disqualification to be an elector *viz.*, that he was below 21 years on the qualifying date, which can be looked into by the Returning Officer or the Election Tribunal. As the minimum age of 21 years for an elector has been prescribed by the provisions of the Constitution, any contrary interpretation of any provisions of the Representation of the People Act, 1950 or 1951 or of the Representation of the People (Preparation of the Electoral Rolls) Rules, 1951, will not be valid as it would defeat the provisions of the Constitution on a consideration of the relevant provisions of the Constitution of India and the law made by the Parliament relating to the elections we have come to the conclusion that the lack of statutory qualifications or statutory disqualifications specially of a personal nature can be considered both by the Returning Officer and the Election Tribunal whether it is the case of a candidate or a proposer.

An argument has been advanced by the learned counsel for the respondent No. 1 that according to section 36 (7) (a) of the Representation of the People Act, 1951, it is only a certified copy of an entry made in the electoral roll of any constituency which shall be conclusive evidence of the right of any elector named in that entry to stand for election or to subscribe to a nomination paper but where no such certified copy is filed, this provision shall not apply. In view of the above opinion expressed by us we do not think it necessary to go into this point as we have already held that the Returning Officer or the Election Tribunal has power to enquire into the correct age of an elector who subscribes to the nomination paper.

Now the next question that arises for consideration is whether it has been proved before us that the age of the proposer Bahadur was 21 or below 21 years on the qualifying date. We do not propose to consider this question on the materials placed by the parties before the Returning Officer, as there is some difference between the parties, as to the evidence led by them before him. The parties have led their evidence on the question of age of the proposer Bahadur, before us and the question now for consideration is whether it is proved from the evidence that Bahadur was 21 years of age on the qualifying date. The petitioner in support of his contention that Bahadur was 21 years of age, on the qualifying date, has examined three witnesses, out of whom the first witness P. W. 2 is alleged to be the maternal uncle of Bahadur. He has deposed that Bahadur was born in Samvat 1983, but does not remember the date or month of Bahadur's birth. So far as the evidence of this witness is concerned, it appears to be very unusual for a maternal uncle to remember the year of birth of his nephew when he has got other nephews and nieces, and we are of the opinion that he is a tutored witness on whose evidence it will be very unsafe to place any reliance. The next witness who has been examined on this point is Noor Mohd. P. W. 4, who says that he had attended the circumcision ceremony of Bahadur, which had taken place in Samvat 1983. But in the cross examination when he is asked to give the year in which one of the two brothers of Bahadur died, he pleads complete ignorance and cannot even say whether he died at the age of 2 or 50 and cannot even say whether Bahadur has got any daughters, and also in what year his father died. He is not related to Bahadur. Taking into consideration the entire evidence of this witness, we are satisfied that his evidence should not be given any credence. The other witness who has been examined on this point is Ibrahim P. W. 6 who has no personal knowledge about the age of Bahadur and as such does not help the petitioner. Last of all is the evidence to the petitioner himself, who says that Bahadur is about 27 years of age as his age entered in the electoral roll was 25 years. This evidence also in our opinion is insufficient and does not prove the petitioner's contention. The most important fact is that the petitioner has not examined Bahadur and his mother who are both alive and in our opinion they have been purposely kept back. The presence of Bahadur before the Tribunal would have made the task very much easier in proving his age and the identity which are inter-connected. On account of their absence a very serious doubt has been created in our minds and we cannot by any possible stretch of imagination come to the conclusion that the age of Bahadur has been proved to be 21 years, and as such his identity also is in very great doubt *viz.*,— that the person who has subscribed to the petitioner's nomination paper is not the same person whose name is entered as such in the electoral roll.

The next question which is linked with the question of the correct age of the proposer, which has been discussed above, is the question of the identity of the proposer Bahadur, which was raised at the time of the scrutiny of the nomination paper of the petitioner and has been pressed here also. It has been argued by the learned counsel for the respondent No. 1 that no such person of the name of Bahadur who answers the description contained in the entry in the electoral roll, is really in existence and the boy who was produced before the Returning Officer as Bahadur was, on account of the disparity in age when compared with the age in the electoral roll, a different person, and

since the said boy has not been produced and examined before the Tribunal, an inference should be drawn against the petitioner to the effect that the identity of the boy who was being called as Bahadur and who had subscribed to the petitioner's nomination paper, has not been proved and the same does not tally with the details given in the electoral roll. It is not understood as to why the boy Bahadur was not produced before us. The petitioner's counsel was particularly asked as to why Bahadur had not been produced and he replied that he had gone out of his village and was not expected to return in the near future. Even his mother who is alive has not been examined before us but instead his uncle whose evidence has been discussed above was examined and his evidence has not impressed us at all. In fact, the boy and his mother would have been the best witnesses to prove both the identity and the age of the proposer Bahadur, and we have no hesitation in holding that both these witnesses have been purposely kept back from being examined and as such we are of the opinion that an inference should be drawn against the petitioner viz; that if they had been produced before us, they would not have supported the petitioner's contention. So we come to the conclusion that the petitioner has failed to prove before us both the identity and the age of the proposer Bahadur and as such we are of the opinion that the petitioner's nomination paper has not been improperly rejected by the Returning Officer and answer this issue accordingly.

(ii) In view of our finding on the first part of this issue, this part of the issue viz; whether the improper rejection of the petitioner's nomination paper has materially affected the result of the election, does not arise.

Issue No. 2.—This issue which relates to the rejection of the nomination paper of Shri Barkatullah Khan the respondent No. 3, arises out of the petitioner's allegation contained in paras 7 & 8 of the petition viz; that the nomination paper of this respondent was improperly rejected by the Returning Officer on the ground that by virtue of his being the chairman of the Jodhpur Municipality, he was holding an office of profit and as such was disqualified from being chosen as a member of the Rajasthan Legislative Assembly, under section 191 (1) (a) of the Indian Constitution. It may be mentioned here that the respondent No. 1 in para 5 of his reply to the petition, has denied these allegations and has further stated that this nomination paper was rightly rejected by the Returning Officer, and that the office of Chariman of the Jodhpur Municipality which was being held by the respondent No. 3 was an office of profit as defined by section 191 (1) (a) of the Indian Constitution, in as much as (i) he was drawing an allowance of Rs. 130 per month from the State Treasury, (ii) the Jodhpur Municipality was being financed by the Government of Rajasthan and (iii) he was not liable to be dismissed without the sanction of the Government. On 14th February, 1953, we, in order to clear up the point as to the nature of remuneration which was being received by the Chairman of the Jodhpur Municipality, enquired from the learned counsel of the petitioner, who stated that the respondent No. 3 was getting Rs. 130 per month as an honorarium.

In connection with this issue we find that the petitioner has failed to produce the nomination paper of the respondent No. 3 and also the order of rejection passed thereon by the Returning Officer, which, in our opinion, are two most important and necessary documents, in the absence of which it has become very difficult for us to go into the question of improper rejection of the nomination paper in question. It is not very clear from the allegations contained in the petition and also the reply that the only ground on which this nomination paper was rejected, was that the respondent No. 3 was holding an office of profit as Chairman of the Jodhpur Municipality. In the absence of these two documents, which has not been explained at all, we are of the opinion that we should not go into the question of propriety or otherwise of the order which has been made the very object of attack by the petitioner, but since the point has been put in issue and evidence also led on it we are inclined to go into it.

It is an admitted position that the respondent No. 3, was the Chairman of the Jodhpur Municipality, at the time of the filing of the nomination paper, and in such capacity he was getting Rs. 130 per mensem as an honorarium from the Municipality though in the evidence led by the petitioner, an effort has been made to show that the sum of Rs. 130 per mensem was not an honorarium, but a car allowance. In view of a very clear admission of the counsel of the petitioner recorded in his statement on 14th February, 1953 that the respondent No. 3 was getting Rs. 130 per month as honorarium, we are not going to consider the suggestion that it was a car allowance. The real point for consideration is whether the office of the Chariman of the Jodhpur Municipality held by this respondent falls within the provisions of the Indian Constitution, as an office of profit under the Government of Rajasthan, and in order to decide this question, we have to see (i) whether office of the chairman held by the respondent No. 3 was an office of profit and (ii) whether it was under the state Government viz; the Government of Rajasthan. The broad dictionary meaning of the word "Profit" is any advantage or gain, improvement, benefit, addition to goods or value", which need not necessarily be in the shape of money, and even the enjoying of a status or position, in some cases including the case under consideration, would constitute, an office of profit without any money compensation attached to it. It has further been described in law Lexicon" by Rama Natha Ayer as "an office to which salary, compensation, a fee are attached and the amount of the salary or compensation is not material." Thus it would appear that pecuniary advantage is an essential element but not the only element, although once it is there, or there can be pecuniary gain, its quantum seems to be immaterial. This case of the respondent No. 3 would have changed its aspect to a very great extent, if the honorarium of Rs. 130 per mensem had not been attached

to the post of the President of the Jodhpur Municipality and this is sufficient to constitute "Profit" as contemplated by the provisions of Law applicable to this case viz ; Article 191 (1) (a) of the Indian Constitution." So we hold that the office of the Chairman of the Jodhpur Municipality held by the respondent No. 3 falls within the expression "Office of Profit" on account of the receipt of honorarium of Rs. 13 per month and also the status and position enjoyed by him as such.

The next question for consideration is whether the respondent No. 3's office which was, no doubt, of profit, was "held under the Government of a State" so as to entail a disqualification against him under the provisions of s. 191 (1) (a) of the Indian constitution. In deciding this question various tests can be applied viz ; (1) whether the state Government held the power of appointing or removing from office the President of the Jodhpur Municipality (2) Whether it has power to issue directions to the President and compel obedience to such directions and (3) whether the profit in question was derived by respondent No. 3 from the Government of the State. It is not necessary that all these tests should be cumulatively applied in order to come to a decision whether a person is holding "an office of profit under the Government of a state", but in our opinion it is enough, if any one or two tests, can bring us to the conclusion one way or the other. So keeping in view this principle which has been adopted by a great majority of the Election Tribunals both before and after the passing of the present constitution, we have to examine whether the respondent No. 3's office was "an office of profit under the Government of a State".

In this connection, our attention has been drawn to the provisions contained in sections 53, 59, 66, and 69 of the Jodhpur Municipal Act, 1943, which relate to the appointment, removal and the status of the President respectively which for purpose of convenience, are reproduced below :—

Appointment of President.—(53) The President of the Board will be a non-official elected by the members of the Board from among themselves subject to the approval of the Government.

Removal of President or Vice President.—(59) A President or a Vice President may be removed from the office by Government on the ground of persistent failure to perform his duty and shall not be eligible for reappointment until so declared by the Government.

Provided that when the Government propose to take action under this section, it shall give the President or Vice President concerned an opportunity of explaining his conduct, and shall in the event of taking such action place on record the reasons therefor. Application of the Jodhpur Government service Regulations to the Municipal servants :—(66) The Jodhpur Government Service Regulations will apply to all officers and servants of the Municipality. Municipal Officer to be Public Servant :—(69) Every member and every municipal officer and servant shall be deemed to be a public servant within the meaning of section 21 of the Marwar Penal Code."

Whether the post of a chairman of any particular Municipality held by any person, will be deemed to be "an office of profit under the Government of a state, will depend upon the various provisions of the Municipal Act which governs the said Municipality. So it will not be proper and safe for us to rely upon the judgment of any Tribunal on this point as the provisions of that Municipal Act may be different from those of the Jodhpur Municipal Act, the relevant provision of which have been very carefully considered by us and we are of the opinion that section 53 in fact gives a hand to the Government in the appointment of the President which cannot be made until and unless the Government agrees to it, and section 59 makes every member a public servant within the meaning of section 21 of the Merwar Penal Code. The underlying idea of these provisions of the Jodhpur Municipal Act, which was passed by the former Government of Jodhpur, before the formation of the state of Rajasthan, was that the Jodhpur Municipality, should not be a fullfledged local self governing body like some of the Municipalities in the former provisions of Bombay, Bengal, Madras, United Provinces etc. but should remain under the direct control of the Government in some respects including the appointment and removal of its President and Vice-President. These provisions as a matter of fact, will not ordinarily be found in the Municipal Acts governing the Municipalities which are fully self-governing bodies, in which the election of the President or the Vice President (which otherwise is legal and valid) is never subject to the control of the Government nor is their removal in the hands of the Government as is in the case of the Jodhpur Municipality. The reasons, obviously, seems to be that the Jodhpur citizens, in the days of then Jodhpur Government were not considered as advanced and progressive in the sphere of Local Self Government as the people of the major provinces in India, where they had made a very appreciable advance in this direction. With this background it is clear to us that the Jodhpur Municipal Act does not make the President and the Vice President of the Jodhpur Municipality absolutely independent of the Government but they have, on account of these provisions, been under the control of the Government so far as their appointment, removal etc. are concerned. In this connection, it is also necessary to clear up one more point whether the provisions of the Jodhpur Municipal Act, 1943 have undergone any change after the intergration of the Jodhpur state into the state of Rajasthan and we have been informed by the learned counsel of the respondent No. 1 that by the ordinance No. 1 of 1949 issued by the Rajpramukh, the Government of the State of Rajasthan, has been substituted in place of the word "Government" appearing in the various laws in force in the converting states which merged into Rajasthan. So accordingly the word "Government" appearing in the Jodhpur Municipal Act, which originally referred to the Jodhpur Government will now mean the Government of the state of Rajasthan.

There is one more point to be taken into consideration to determine whether the office of the President of the Jodhpur Municipality will amount to "an office of profit" within the provisions of the Indian Constitution and it is that the Jodhpur Municipality gets some annual grant from the Government of Rajasthan, which has been admitted by the respondent No. 1 in his evidence, though in our opinion this factor by itself, will not be of any assistance to us. Therefore taking into consideration, the above provisions of the Jodhpur Municipal Act, 1943 which are of a very peculiar nature, we have no hesitation in coming to the conclusion that out of the above three tests, the first two tests can very safely be made applicable to the office of the President of the Jodhpur Municipality, which in our opinion are quite sufficient for deciding this question, so as to put it within the provisions of Article 191 (1)(a) of the Indian Constitution, which in our opinion prescribes a disqualification as against the President of the said Municipality. Accordingly we hold that the respondent No. 3 as such President did hold an office of profit under the Government of State of Rajasthan and as such his nomination paper was, rightly rejected by the Returning Officer and answer this issue accordingly.

In view of our finding that the nomination paper of the respondent No. 3 has been properly rejected by the Returning Officer, the question whether its improper rejection has materially affected the result of the election does not arise.

Issue No. 3.—This issue relates to the allegations contained in the petition that the nomination paper of the respondent No. 1 has been improperly accepted as he is a Jagirdar holding three villages in Jagir from the State of Rajasthan, the income of which he realises for the services which he renders to the state, and as such holds an office of profit under the State of Rajasthan, which is a disqualification according to article 191(1)(a) of the Indian Constitution. During the course of arguments, the learned counsel for the petitioner admitted that there was no evidence on the record to prove these allegations and as such he dropped this issue. We also find that the petitioner has failed to prove that the respondent No. 1 holds an office of profit under the State of Rajasthan so as to be subject to the disqualification contained in Article 191(1)(a) of the Indian Constitution and answer the issue accordingly.

Issue No. 4.—In para 11 of his reply, respondent No. 1 has contended that the petitioner's nomination paper was liable to be rejected on the ground that the age of his agent was below 21 years. It appears from the nomination paper that the petitioner had appointed the above Bahadur who was his proposer, as his agent and as such since the question of his age has been discussed under Issue No. 1, it is not necessary to discuss this point over again.

Issue No. 5.—In the result, therefore, our conclusion is that the petitioner has failed to prove that either his nomination paper or that of the respondent No. 3 had been improperly rejected for the nomination paper of respondent No. 1, had been improperly accepted and we, therefore, dismiss the petition with costs. Since the petitioner has failed on all the grounds urged by him in his petition, we order that he should bear his own costs and also those incurred by the respondent No. 1. We fix Rs. 250 (Rupees Two hundred fifty) as Advocate's fees for the respondent No. 1.

ORDER

The Election Petition No. 283 of 1952 is dismissed. The petitioner shall bear his costs and shall pay to the Respondent No. 1 his costs including Rs. 250 as Advocate's fee.

M. P. ASTHANA, *Chairman.*

Dated the 30th April 1953.

M. C. BHANDARI, *Member.*

GOVERDHANDAS T. GAJRIA, *Member.*

Judgment pronounced, signed and dated the 30th April, 1953 in Open Court.

M. P. ASTHANA, *Chairman.*

M. C. BHANDARI, *Member.*

GOVERDHANDAS T. GAJRIA, *Member.*

Dated 30th April 1953.

[19/283/52-Elec. III/6688.]

By Order,

P. R. KRISHNAMURTHY, *Asst. Secy.*

